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Attorneys for Plaintiff  
UNIVERSITY OF PITTSBURGH

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNIVERSITY OF PITTSBURGH OF THE  
COMMONWEALTH SYSTEM OF HIGHER  
EDUCATION d/b/a UNIVERSITY OF  
PITTSBURGH

Plaintiff,

v.

VARIAN MEDICAL SYSTEMS, INC.

Defendant.

Case No. CV 08-02973 MMC

**PLAINTIFF'S ADMINISTRATIVE  
MOTION TO FILE UNDER SEAL  
PORTIONS OF A DOCUMENT TO  
UNIVERSITY OF PITTSBURGH'S  
REQUEST FOR JUDICIAL NOTICE  
ISO ITS OPPOSITION TO VARIAN  
MEDICAL SYSTEMS, INC.'S MOTION  
TO DISMISS**

Date: September 5, 2008  
Time: 9:00 a.m.  
Courtroom 7, 19th Floor

**ADMINISTRATIVE MOTION TO FILE PORTIONS OF A DOCUMENT UNDER SEAL**

Pursuant to Civil L.R. 79-5 and 7-11, Plaintiff University of Pittsburgh (“UPitt”) respectfully requests leave of the Court to file under seal portions of the following exhibit to University of Pittsburgh’s Request for Judicial Notice in Support of Its Opposition to Varian Medical Systems, Inc.’s Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6) that have been lodged with the Clerk:

1. Exhibit 2: Memorandum in Support of Defendant Varian Medical Systems, Inc.’s Motion for Summary Judgment for Lack of Standing, Or in the Alternative, Motion for a Preliminary Hearing on the Issue of Standing filed under seal by Varian Medical Systems, Inc. on November 21, 2007, Docket No. 128, in the Western District of Pennsylvania action, Case No. 07-0491. This memorandum contains information from documents that were designated as Confidential Attorney Eyes Only by University of Pittsburgh pursuant to the Protective Order (Docket No. 29, as amended Docket No. 331) entered in the Western District of Pennsylvania action, Case No. 07-0491.

As per Civ. L.R. 79-5(c)(1), University of Pittsburgh files herewith the Declaration of Laura Hillock in Support of University of Pittsburgh’s Administrative Motion to File Under Seal Portions of a Document establishing that portions of Exhibit 2 designated by University of Pittsburgh as confidential are sealable.

As required by Civ. L.R. 79-5(c), UPitt is lodging with the Clerk two copies of Exhibit 2 with the sealable portions identified for filing under seal, and a redacted version of Exhibit 2 that can be filed in the public record.

Dated: August 15, 2008

MORGAN LEWIS & BOCKIUS LLP

By: /s/ Rita E. Tautkus

Rita E. Tautkus  
Attorneys for Plaintiff  
UNIVERSITY OF PITTSBURGH

DANIEL JOHNSON, JR. (SBN 57409)  
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Case No. CV 08-02973 MMC

UNIVERSITY OF PITTSBURGH OF THE  
COMMONWEALTH SYSTEM OF HIGHER  
EDUCATION d/b/a UNIVERSITY OF  
PITTSBURGH

Plaintiff,

v.

VARIAN MEDICAL SYSTEMS, INC.

Defendant.

**STIPULATION AND [PROPOSED]  
ORDER GRANTING PLAINTIFF'S  
ADMINISTRATIVE MOTION TO FILE  
UNDER SEAL PORTIONS OF A  
DOCUMENT TO UNIVERSITY OF  
PITTSBURGH'S REQUEST FOR  
JUDICIAL NOTICE ISO OF ITS  
OPPOSITION TO VARIAN MEDICAL  
SYSTEM INC.'S MOTION TO DISMISS.**

1 WHEREAS, Defendant Varian Medical Systems, Inc. filed under seal a Memorandum in  
2 Support of Defendant Varian Medical Systems, Inc.'s Motion for Summary Judgment for Lack of  
3 Standing, Or in the Alternative, Motion for a Preliminary Hearing on the Issue of Standing  
4 ("Varian's SJ Brief") on November 21, 2007, Docket No. 128, in the Western District of  
5 Pennsylvania action, Case No. 07-0491.

6 WHEREAS, Varian's SJ Brief contains information from documents that were designated as  
7 Confidential Attorney Eyes Only by University of Pittsburgh pursuant to the Protective Order  
8 (Docket No. 29, as amended Docket No. 331) entered in the Western District of Pennsylvania action,  
9 Case No. 07-0491.

10 WHEREAS, Defendant Varian Medical Systems, Inc. has filed in this Court Defendant  
11 Varian Medical Systems, Inc.'s Notice of Motion and Motion to Dismiss Plaintiff's Claims Pursuant  
12 to Fed. R. Civ. P. 12(b)(6) Based on Doctrine of Res Judicata; Memorandum of Points and  
13 Authorities in Support Thereof, Docket No. 50, on July 23, 2008.

14 WHEREAS, Plaintiff University of Pittsburgh intends to file an opposition to Defendant's  
15 Motion to Dismiss Plaintiff's Claims Pursuant to Fed. R. Civ. P. 12(b)(6) Based on Doctrine of Res  
16 Judicata.

17 WHEREAS, Plaintiff University of Pittsburgh intends to file a Request for Judicial Notice in  
18 Support of Its Opposition to Varian's Motion to Dismiss.

19 WHEREAS, Plaintiff University of Pittsburgh seeks to file under seal confidential portions  
20 of Varian's SJ Brief as an exhibit to its request for judicial notice.

21 THEREFORE, Plaintiff University of Pittsburgh, by and through its attorneys, hereby request  
22 that the Court order to be filed under seal the portions of Varian's SJ Brief indicated in Plaintiff's  
23 Administrative Motion to File Under Seal Portions of a Document to University of Pittsburgh's  
24 Request for Judicial Notice ISO Its Opposition to Varian Medical Systems, Inc.'s Motion to  
25 Dismiss, and Varian Medical Systems, Inc., by and through its attorneys, consent to entry of such an  
26 order.

1 Dated: August 15, 2008

DANIEL JOHNSON, JR.  
RITA E. TAUTKUS  
MORGAN LEWIS & BOCKIUS LLP

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3  
4 By: /s/ Rita E. Tautkus

5 Rita E. Tautkus  
6 Attorneys for Plaintiff  
UNIVERSITY OF PITTSBURGH

7  
8  
9  
10 Dated: August 15, 2008

WILLIAM L. ANTHONY  
MATTHEW H. POPPE  
ZHENG LIU  
ORRICK, HERRINGTON & SUTCLIFFE LLP

11  
12  
13  
14 By: /s/ Zheng Liu

15 Zheng Liu  
16 Attorneys for Defendant  
VARIAN MEDICAL SYSTEMS, INC.

17  
18 Pursuant to General Order No. 45, Section X(B) regarding signatures, I, Rita E. Tautkus,  
19 attest that concurrence in the filing of this document has been obtained from each of the other  
20 signatories. I declare under penalty of perjury under the laws of the United States of America that  
21 the foregoing is true and correct. Executed this 15th day of August, 2008, at San Francisco,  
22 California.

23  
24 /s/ Rita E. Tautkus  
Rita E. Tautkus  
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ORDER

Upon good cause shown, IT IS HEREBY ORDERED that Plaintiff's Administrative Motion to File Under Seal Portions of a Document is GRANTED as follows:

The portions of Exhibit 2 to University of Pittsburgh's Request for Judicial Notice in Support of Its Opposition to Varian Medical Systems Inc.'s Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6) identified by University of Pittsburgh as sealable in the document lodged with the Clerk in a sealed envelope labeled "DOCUMENT SUBMITTED UNDER SEAL" in connection with its request for judicial notice SHALL be filed UNDER SEAL by the Clerk.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2008

\_\_\_\_\_  
The Honorable Maxine M. Chesney  
United States District Court Judge